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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A. N., a Person Coming Under the  
Juvenile Court Law.

2d Juv. No. B221197  
(Super. Ct. No. J067244)  
(Ventura County)

VENTURA COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

REBEKAH. C. et al.,

Defendants and Appellants.

Rebekah C. (mother) and Dustin N. (father) appeal from the order of the juvenile court terminating parental rights to their infant daughter, A.N. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)<sup>1</sup> The parents filed separate briefs, both contending that the juvenile court erred by ruling that the parental benefit exception to adoption did not apply. We affirm.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## FACTS

Two-month old A.N. came to the attention of the Human Services Agency (Agency) when a referral reported that mother and father sat outside the house, smoked marijuana and drank beer with their friends while she cried. She did not get regular baths or proper feedings. The parents would prop the bottle up for her and leave the room. A.N. was removed from the home in October 2008.

In a jurisdiction/disposition report, the Agency stated that mother and father have problems with substance abuse and mental health issues. Father was recently hospitalized after a drug overdose. The parents have a history of ongoing domestic disputes, which have resulted in police involvement on numerous occasions. The parents also have a history of failing to maintain a clean and sanitary home. An emergency response worker observed clothes strewn throughout the house and dirty plates and empty cans on the floor. Newborn puppies were under the crib. Seven dogs were in the backyard and four cats were on the kitchen counter.

At the jurisdiction/disposition hearing, the court sustained the allegations of an amended petition and offered reunification services to mother and father. It cautioned that they must comply with court-ordered services (described in their case plans) within six months, or services would be terminated.

### *Six Month Review Hearing*

A contested six-month review hearing was held on June 9, 2009. The Agency recommended the termination of reunification services. Mother and father had been provided with twice weekly supervised visits. The parents are affectionate towards A.N. and she enjoys playing with them. However, mother and father have continued a pattern of breaking up and reuniting. They fight in front of A.N. during visits, upsetting her. They seem unaware of her distress. Mother is pregnant with another child by father. Both parents seem unable to comprehend that they are expected to complete services. They are overwhelmed by the activities of daily living necessary to meet their own needs.

Neither parent testified at the hearing. Father made an offer of proof through his counsel that (1) he had completed parenting classes at a church (through

"Pastor Howard"); (2) he intended to ask Pastor Howard about anger management classes; (3) he had participated in a mental health assessment by Behavior Health (BH); (4) BH contacted father one week later and informed him "there was nothing further they could do for him"; and (5) father did not need relationship counseling because he and mother were no longer in a relationship.

Mother's counsel made an offer of proof that (1) she had completed parenting classes; (2) BH gave her a mental health assessment over the phone, but she had not heard back from them; (3) she had not yet begun an anger management course; and (4) she had recently begun attending Alcoholics Anonymous/Narcotics Anonymous meetings.

County counsel acknowledged that BH never contacted the parents after their initial assessments. The social worker, however, had referred the parents to Aspira, which provides the same type of counseling as BH. Aspira set up an appointment that both parents missed. Aspira attempted to reschedule on four more occasions. The parents never responded and were discharged from the program. Neither parent completed an intake assessment at a drug and alcohol program. Following argument, the juvenile court found by clear and convincing evidence that the parents had failed to make substantive progress in their court-ordered treatment plans. It terminated reunification services and set the matter for a section 366.26 hearing.

#### *Section 366.26 Hearing*

A contested section 366.26 hearing was conducted on December 17, 2009. The Agency submitted into evidence a supplemental report and a memoranda issued in late September and a memoranda dated November 16. All recommended the termination of parental rights. A.N. had become very attached to the foster mother, and the foster parents wished to adopt her. She has been living with the prospective adoptive parents since she was removed from her parents' home at the age of two months.

The memoranda indicated that the parents initially visited regularly, but their relationship deteriorated. They began arguing during visits, and father's visits decreased. Mother continued to bring friends and relatives, despite being told not to. She

continued to phone father and other relatives during visits. On one occasion, when A.N. crawled and hit her head, mother did not comfort her. Instead, she said A.N. would learn from the experience. On a different occasion, A.N. began crying because she could not hold the bottle. Her hands were greasy from eating macaroni and cheese. The parents laughed at her and did not clean her hands. Father once came to a visit smelling of marijuana, even though he was aware A.N. had breathing difficulties severe enough to require treatment.

The Agency concluded that, although mother and father were affectionate towards A.N., they were unable to recognize or respond to her needs, and had not established a parent/child relationship. A social worker described the contact between A.N. and her parents as a "relationship that mirrors that of a weekly babysitter."

At the hearing, father testified that he often missed visitation because it was scheduled during his work hours. When he was able to attend, his visits were very positive. When A.N. saw him, she would "light up" and hug him and they would play together for the duration of the visit. Father testified that A.N. should not have been detained. He believed that false statements had been made in some of the reports. Father acknowledged that he had not completed his anger management classes, but emphasized that he had started them. He was no longer working, so could not afford to pay for classes. Father had been trying to find a church where he could take them for free.

Mother testified that she visited the minor weekly, often with father. When mother arrived, A.N. would hug her and say, "Mommy," and point to her sister and say, "baby." A.N. interacted with both mother and father, playing with them and sharing snacks. A.N. liked to sing and dance and race down the hallway. When mother and father left, A.N. cried. Mother testified that "[A.N.] is my world. I would do anything for her."

Mother stated that A.N. should never have been taken from her. She said the Agency should have had more faith in them because they were new parents. Mother concluded, "I don't think anybody else should be taking care of her. She's mine." Mother explained that she had missed ten visits with her daughter because the Agency cancelled

them. She then admitted that the cancellations were often due to her failure to confirm the visits.

The Agency argued that the parents continued to blame the system rather than taking responsibility for the behavior that brought A.N. into the system. A.N. has been in the same foster home since her removal at age two months. The foster parents are the only parents she has ever known. The Agency asserted that neither mother nor father had regular visitation and their visits have not progressed beyond supervised visits. During the visits they played, read and sang. The Agency characterized the visits as "an overall positive interaction," which did not rise to the level of a parental relationship. Most disturbing was the fact that the parents argued during the visits, upsetting A.N.

The juvenile court indicated that mother and father were "stuck in the past." They had been given six months to show the court that A.N. could be returned, told how to accomplish her return, and the consequences if they failed. Yet they did nothing. The court found A.N. to be adoptable and explained to mother and father that it must next determine whether there was an exception to adoption. It considered A.N.'s age and that she had been out of her parents' custody for most of her life. The court noted that mother and father had been unable to progress beyond supervised visits. It stated, "[i]t's clear to me that your visits are pleasant, that [A.N.] enjoys them, that you do a good job during your visits, but that's not what being a parent is about and that's not the kind of relationship that legally would create an exception to adoption. It's just not enough. So legally I can't and I won't find that the exception applies."

The juvenile court weighed the detriment of terminating parental contact against the benefit of adoption. It indicated that, although the minor might miss the visits with mother and father, it was more beneficial for her to be adopted and have a stable and permanent home. The court terminated the parental rights of mother and father, selected adoption as the permanent plan, and set the matter for a post-permanency review.

## DISCUSSION

### *Parental Benefit Exception to Adoption*

Mother and father contend the juvenile court erred by ruling that the parental benefit exception to adoption does not apply. Section 366.26, subdivision (c)(1) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted. However, a court may choose not to terminate rights if it finds, under an enumerated exception, "a compelling reason for determining that termination would be detrimental to the child . . . ." (*Id.*, subd. (c)(1)(B).) One such exception applies when there exists a beneficial parental relationship. This exception requires a showing of "regular visitation and contact with the child and [that] the child would benefit from continuing the relationship." (*Id.*, subd. (c)(1)(B)(i); *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

"To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.]" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) There must be proof of a parental relationship, not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.)

Courts are divided as to the standard of review to be applied to a finding on the parental relationship exception. Most have applied a substantial evidence standard, which asks whether there is any substantial evidence, contradicted or otherwise, supporting the juvenile court's finding. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Others have reviewed the finding for an abuse of discretion. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

Under either standard, the juvenile court's finding is proper. It considered that A.N. had been out of her parents' custody for the majority of her life. Despite six months of reunification services, both parents continued to insist that A.N. should not have been removed. The court acknowledged that A.N. enjoyed her supervised visits with mother and father, but found that their efforts during visitation did not constitute a parental relationship. It concluded that it was more beneficial to A.N. to have a permanent home, rather than to face an uncertain future.

Even if mother and father had satisfied the first prong of the exception requiring regular visitation, they failed to meet the second prong requiring proof of a beneficial parental relationship with A.N. Substantial evidence supports the juvenile court's finding that mother and father failed to prove that the parental relationship exception applied.

#### DISPOSITION

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Tari L. Cody, Judge  
Superior Court County of Ventura

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Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant Rebekah C.

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